

**Regular Minutes
City Council/Redevelopment Agency
City of Huntington Beach**

Monday, September 19, 2005
4:00 P.M. - Room B-8
6:00 P.M. - Council Chambers
Civic Center, 2000 Main Street
Huntington Beach, California 92648

An audiotape of the 4:00 p.m. portion of this meeting
and a videotape of the 6:00 p.m. portion of this meeting
are on file in the Office of the City Clerk.

Call to Order

Mayor Hardy called the regular meetings of the City Council/Redevelopment Agency of the City of Huntington Beach to order at 4:06 p.m. in Room B-8.

City Council/Redevelopment Agency Meeting Roll Call

Present: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
Absent: None

Public Comments

Julie Bixby encouraged Council to favor all of Bolsa Chica if they decide to move forward with the annexation. She noted potential eco-tourism dollars and the need for the Police Department to enforce laws in the area. She also spoke regarding the agenda item pertaining to the annexation of the Bolsa Chica, questioning why the City should pay for annexation fees. Ms. Bixby suggested no annexation agreement take place until negotiations are completed with the property owner.

The City Clerk Announced Late Communications

Pursuant to the Brown (Open Meetings) Act, City Clerk Joan L. Flynn announced Late Communications regarding an agenda item that had been received by her office following distribution of the agenda packet:

Communication submitted by Hearthside Homes dated September 16, 2005 titled *Preliminary Warner Mesa Annexation Study* providing comments on the study methodology and noting incorrect statements contained in the report.

Communication submitted by Howard Zelefsky, Planning Director dated September 16, 2005 titled *Bolsa Chica Warner Mesa Annexation Fiscal Analysis* notating corrections to the study by the City's consultant, which resulted in changes to seven pages of the report.

The Following Additional Late Communications Were Submitted During the Meeting:

Revised PowerPoint report submitted by RSG, Inc. dated September 19, 2005 titled *Warner Mesa Annexation Study*.

Communication submitted by Principal Planner MaryBeth Broeren, undated, titled *Brightwater, Exhibit II.1-3, Master Phasing Plan*.

(City Council/Redevelopment Agency) Study Session Held – The City's Consultant, RSG, Inc., Completed a Fiscal Analysis Related to the Potential Annexation of the Bolsa Chica Mesa (Hearthside Homes Development). City Staff and RSG Presented an Overview of the Analysis Findings. (450.40)

Principal Planner MaryBeth Broeren introduced the topic, announced the presence of LAFCO representative, Carolyn Emery and Felice Acosta of RSG, Inc. to answer questions. Ms. Acosta presented a PowerPoint report titled *Warner Mesa Annexation Study*, which was included in the agenda packet. The report was an update to Bolsa Chica Mesa development status and the fiscal impact of the annexation to the City. She explained what assumptions were made in the study based on three different scenarios: Annexation prior to development, predicting a surplus of \$19.2 million; Annexation after development (in year 3), predicting a surplus of \$4.11 million; and Development without annexation, predicting a surplus of \$3.32 million.

City Clerk Joan L. Flynn inquired about the numbers in the PowerPoint report. Ms. Acosta clarified that the report has been revised, and that she would submit a revised report to the City Clerk's office. MaryBeth Broeren concluded the staff report referring to park in-lieu fees and park space required of the developer.

Councilmember Green inquired about \$8.75 million in fees. Staff responded, stating that Council would be involved in the negotiation/decision. Mayor Hardy inquired about the Holly-Seacliff development and an area near Peter Green Park, asking if the areas qualified for park credit. Mayor Pro Tem Sullivan inquired about who paid for the development of the half-acre parks in Seacliff. Staff responded to the inquiries, and stated that the City paid for development. Councilmember Cook inquired about active recreation area requirements, and staff reported on Coastal Commission and County requirements. Councilmember Hansen inquired what would compel the developer to submit to annexation. Councilmember Coerper inquired about water supply concerns with scenario one and public safety expenditures of zero in year one. Councilmember Bohr inquired about the contract status for water in the area. Staff reported on water rights and franchise agreements.

Council inquired of Ed Mountford, representing Hearthside Homes, regarding development agreements and special conditions. Mr. Mountford reported on the current sales agreement status and the permit from the Coastal Commission for the Lower Bench. He also spoke regarding the amended site development/grading permit and tract map from the County and the goal to start pipeline construction January or February 2006 to meet development goals. Mr. Mountford outlined the importance of timing, the agreement with the City, and obligations to Southern California Water. Mayor Pro Tem Sullivan asked about the City's obligation to Southern California Water, and asked for clarification on issues in a letter submitted as a Late Communication regarding one-time fees. Mr. Mountford responded, and staff reported on taxes versus fees. Councilmember Coerper inquired about the cost of the pipeline and facility. Mr. Mountford responded the cost is approximately \$8 million.

Councilmember Coerper inquired further about potential litigation and the City Attorney responded, referring to the franchise agreement. Councilmember Cook inquired about the property tax agreement with the County and funds the City would receive. Staff and the consultant responded, referring to page 32 of the study, which was included in the agenda packet.

Councilmember Bohr asked about the timing of the negotiated development agreements. Staff reported on the normal LAFCO process timing, and the potential of expediting in four months. Councilmembers inquired regarding tax revenue and the destination and allowable uses of funds. The consultant reported the funds would move over to the General Fund. The City Attorney agreed to investigate that process. LAFCO reported that funds received by cities and expended are not overseen by LAFCO. Inquiries were made regarding development standards that differ between the County and the City. Staff reported on different City specific plans, including street widths.

Motion to Recess to Closed Session – Approved

A motion was made by Sullivan, second Coerper to recess to Closed Session on the following items. The motion carried by consensus of all present, none absent.

(City Council) Closed Session – Pursuant to Government Code Section 54957.6 to meet with its designated representatives: Agency Negotiators: Penelope Culbreth-Graft, City Administrator; Chuck Thomas, Acting Director of Administrative Services, Dan Villella, Finance Officer; and Irma Youssefieh, Human Resources Manager regarding labor relations matters – meet and confer with the following employee organizations: **MSOA, and SCLEA**. Subject: **Labor Relations – Meet & Confer**. (120.80)

(City Council) Closed Session – Pursuant to Government Code Section 54956.9(a) to confer with its attorney regarding pending litigation which has been initiated formally and to which the City is a party. The title of the litigation is **Lynn Copeland v. City of Huntington Beach**, Orange County Superior Court Case No. 04CC10768. Subject: **Lynn Copeland v. City of Huntington Beach**. (120.80)

(City Council) Closed Session – Pursuant to Government Code Section 54956.9(a) to confer with its attorney regarding pending litigation which has been initiated formally and to which the City is a party. The title of the litigation is **Michelle Phillipy v. City of Huntington Beach, et al.** Orange County Superior Court Case No. 04CC10619. Subject: **Michelle Phillipy v. City of Huntington Beach, et al.** (120.80)

(City Council) Closed Session – Pursuant to Government Code Section 54956.9(a) to confer with its attorney regarding pending litigation which has been initiated formally and to which the City is a party. The title of the litigation is **McAllister v. City of Huntington Beach**; Orange County Superior Court Case No. 05CC04676. Subject: **McAllister v. City of Huntington Beach**. (120.80)

Reconvened City Council/Redevelopment Agency Meeting – 6:09 P.M. – Council Chambers.

City Council/Redevelopment Agency Roll Call

Present: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
Absent: None

(City Council) City Attorney's Report of Action Taken by the City Council in Closed Session Pursuant to Government Code §54957.1(a) (2) Regarding McAllister v. City of Huntington Beach, et al (120.80)

City Attorney Jennifer McGrath reported that Council authorized the City Administrator to enter into a settlement agreement and a court judgment in the McAllister v. City of Huntington Beach, et al., class action suit that provides as follows:

1. The City shall refund DUI fees collected during the period between September 2002 and February 2003 where the driver was arrested, but not involved in a traffic accident. This amounts to a refund of approximately \$11,300, plus 7% interest, amounting to a total refund of \$14,500.
2. The City shall pay \$500 directly to the lead plaintiff, plus attorney's fees and costs to his counsel in the amount of \$9,600.
3. One-third of the DUI refunds shall be paid over to the Plaintiff's attorneys, plus any refunds not claimed, up to a maximum of \$7,000.
4. The City shall enter into a stipulated judgment providing that in the future, it will only collect DUI fees where: (i) there was an auto accident resulting from a driver under the influence of alcohol or drugs, (ii) an emergency response vehicle was dispatched Code 3 to the scene of a DUI arrest, or (iii) a pursuit was engaged in of a driver under the influence of alcohol or drugs.

Mayor Pro Tem Sullivan clarified that this individual has no relation to the former Mayor.

Pledge of Allegiance – Led by Mayor Hardy

Invocation – Led by Maria Khani, representing Huntington Beach Interfaith Council

The City Clerk Announced Late Communications

Pursuant to the Brown (Open Meetings) Act, City Clerk Joan L. Flynn announced Late Communications regarding agenda items that had been received by her office following distribution of the agenda packet:

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Communication submitted by Howard Zelefsky, Planning Director dated September 16, 2005 titled *Bolsa Chica Warner Mesa Annexation Fiscal Analysis* notating corrections to the study by the City's consultant, which resulted in changes to seven pages of the report.

Communications submitted by Shereen Walter dated September 13 and 16, 2005 requesting information on the Beachview Villas Apartments project located at 8102 Ellis Avenue and the resulting responses from Building & Safety and Planning Departments' staff dated September 15 and 19, 2005.

The Following Additional Late Communications Were Submitted During the Meeting:

Revised PowerPoint report submitted by RSG, Inc. dated September 19, 2005 titled *Warner Mesa Annexation Study*.

Communication submitted by Principal Planner MaryBeth Broeren, undated, titled *Brightwater, Exhibit II. 1-3, Master Phasing Plan*.

Communication submitted by Chuck Scheid dated September 19, 2005 titled *Public Comments, Brown Act Violation*.

Communication submitted by Mary Gillespie dated September 19, 2005 titled *Proposed Home Depot V Surrounding Homes*, which is a drawing of traffic flows.

Communication submitted by Anthony Gaynair, undated, titled *Neighborhood Takes Action Regarding The Home Depot Plan @ Garfield / Magnolia*.

Three communications submitted by Art Leahy titled *Measure M, Your ½-Cent Sales Tax for Transportation at Work*; *Measure M, We need your input!*; and *Measure M Annual Progress Report 2004, Promises Made, Promises Kept*.

Presentation - Mayor Jill Hardy called on Community Services Director Jim Engle who recognized the two Rotary Clubs in Huntington Beach for completion of their community project to commemorate the Centennial year of Rotary International. The clubs raised over \$15,000 from 23 corporate donors and 31 private citizens to purchase an inflatable band shell for the Central Park Bandstand. Each summer, upwards of 1,000 people attend the weekly "Concerts in the Park" organized by the Huntington Beach Concert Band, and the acoustic band shell has greatly enhanced the enjoyment of concert goers. Present at the meeting were the Centennial year Presidents of the two clubs: Marleen Meyer from the Rotary Club of Huntington Beach and Jim Xerikos of the Sunrise Rotary Club. (160.40)

Presentation - Mayor Jill Hardy called on Gordon Gates, Manager of the Ocean View Little League All Star team (9 & 10 year old division). The team recently won the Southern California Little League Championship. This is the highest achievement that this age group can attain and the first time for Huntington Beach. (160.40)

Mayor's Award - Mayor Jill Hardy was joined by Interim Economic Development Director Paul Emery to present the Mayor's Award to Assistant Project Manager Tom Welch. Mr. Emery announced Mr. Welch's many accomplishments with the City, and wished him luck as the Economic Development Manager for the City of Westminster. (160.40)

Public Comments

Cormac O'Modhrain, Chairman of the Conference and Visitors Bureau (CVB), thanked Council for their support and spoke in support of the Consent Calendar item pertaining to the grant agreement between the City and the CVB.

Connie Boardman, former Councilmember and Bolsa Chica Land Trust board member, spoke in support of the annexation process after the purchase of the Lower Bench is negotiated and completed. She stated that the City should not be responsible for the fee to begin the process. Ms. Boardman also stated her opinions on water pipeline costs, and asked Council to keep the \$90 million that she stated the developer would receive.

Je'net Kreitner, representing the Second Harvest Food Bank, reported that Poseidon Resources donated 400 cases of water and that the Citywide food drive is up to 12,370 lbs. She reminded Council and those in the audience of the needs in Orange County, asking for donations of chili. Ms. Kreitner also thanked Huntington Beach Clothing and Jersey Joe's restaurant for donations.

Gerald Chapman, President of the Bolsa Chica Land Trust, stated he is not opposed to the annexation, only to the timing. He referred to the Cost Recovery Findings Study, asking Council to read it and understand the subsidies given to the developer if annexation is approved prior to the sale of the property. Mr. Chapman asked Council to delay annexation until the sale of the Lower Bench is completed.

Alan Gandall, President of Save Our Field, spoke on the Consent Calendar item pertaining to acquisition for public park purposes a portion of school sites urging Council to approve the item. Mr. Gandall stated his eagerness to work with the City as the plan is implemented.

Chuck Scheid spoke regarding an alleged Brown Act violation at the last Council meeting relative to the Edinger beautification project. He referred to a letter he had delivered to the City Council that morning that recommended Council reconsider the action taken at the last meeting. Mr. Scheid asked Council to bring the item back at the next meeting as an agendized item.

(City Council) Reconsidered Adoption of the Budget (320.20)

Mayor Pro Tem Sullivan announced that he would be asking for reconsideration of the item referred to by the previous speaker, giving reasons including the previous budget process followed and changes to the process this year. He stated he did not believe there was a Brown Act violation, and that he wants the process to be consistent with the past.

A motion was made by Sullivan, second Hardy to reconsider the adoption of the budget. (Vote to follow)

Councilmember Green asked for the City Attorney's opinion. City Attorney Jennifer McGrath stated her opinion that there was no Brown Act violation.

Council discussion ensued relative to reasons for supporting or opposing the motion. Mayor Hardy announced that if the motion carried, public comments would need to be in the Public Comments section of the meeting since the public hearing was closed. The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green

NOES: Bohr, Cook

ABSENT: None

Public Comments – Continued

Dorothy Ralphs thanked Council for its support of the Edinger beautification project and reported that the reconnaissance study is complete and under budget. She presented a check for \$2,330 to Council for half of the expense. Ms. Ralphs reported that the Sea Isle Garden Club currently has \$13,550 in the bank for the project.

Anthony Gaynair, resident, spoke regarding the Home Depot project at Garfield and Magnolia, referred to a communication he had distributed to Council, and thanked Assistant Planner Ron Santos and Councilmember Keith Bohr for their assistance. He stated his concerns with the layout of the proposed building and suggested a different orientation, moving the loading dock away from the residences. Mr. Gaynair urged Council to consider the issue and help with a solution.

Mary Gillespie, 40 year resident of Lindsay Lane, referred to a communication (a diagram) she presented to Council and stated concerns about traffic flow, delivery trucks, store hours, noise, and pollution in relation to the Home Depot project. Ms. Gillespie asked Council to consider local residents' needs.

Katie Hendren stated concerns about the Home Depot project and a loudspeaker system in the garden center. She referred to Conditions for Approval relating to noise and stated concerns that there will be greater potential for accidents at the entrances, suggesting alternatives. Ms. Hendren requested an Environmental Impact Report (EIR), asking Council to reflect on her concerns.

Councilmember Bohr asked staff when the Home Depot project is agendaized for consideration. Staff reported that the application would be submitted to the Zoning Administrator (ZA) and only to Council or the Planning Commission if appealed. He suggested concerned individuals communicate with Home Depot since the status has changed on some of the issues raised at this meeting.

Judy de la Cuesta stated concerns with the proposed Home Depot hours of operation. She suggested a 9:00 a.m. opening time, an 8:00 p.m. closing time, and deliveries be made between 9:00 a.m. and 2:00 p.m. Monday through Friday, not including holidays. Ms. de la Cuesta also asked that an Environmental Impact Report (EIR) be prepared.

Britt Klingenberg, resident of Lindsay Lane, voiced concerns with the Home Depot project relating to noise. He stated his opinion that the physical noise barriers proposed are inadequate. He suggested the loading dock be accessed from Garfield Avenue and recommended that Wal-Mart conditions be used with this project. Mr. Klingenberg asked Council to consider noise mitigations conditions required by the City of Costa Mesa, and asked Council to require an EIR.

Kathy Klingenberg referred to a letter she sent to Assistant Planner Ron Santos, stating concerns with the Home Depot project. She listed traffic, noise, hours of operation and delivery, and day laborer issues, including what she referred to as negative environmental impacts. Ms. Klingenberg asked the Council to require an EIR.

Larry Brennan spoke about a meeting held by Home Depot, stating that they have not addressed the residents' concerns. Mr. Brennan asked Council to act in the best interest of the neighborhoods, citing traffic control concerns, child & pedestrian safety, noise levels, and loitering of day workers.

Martin Bannon, 23 year resident, referred to an email he recently sent to Council regarding concerns he has with the Home Depot project. He asked Council to require an EIR from the applicant. He gave examples of traffic concerns, operation hours, and day laborer concerns.

Nancy Lee, Lindsay Lane resident, voiced her concerns for children's safety on their way to school on Magnolia in relation to deliveries to Home Depot. Ms. Lee suggested restricted hours of operation and deliveries, and asked for a crossing guard and an EIR.

Laura Beasley, Lindsay Lane resident, spoke regarding the Home Depot project and two of her concerns. Ms. Beasley stated that an 8-foot wall is not adequate, and that an EIR should be required for the project.

Steve Stafford spoke regarding a claim made by an individual injured at Worthy Park. He commended the Police Department and alleged he had reported this danger in 2002 to the Community Services and the Planning Departments. He stated that nothing has been done to remedy the situation to this date. Mr. Stafford also spoke regarding a developer and the process of approval through the Planning Commission, asking Council to resolve the issues.

Jim Gill, resident of Bahama Lane, asked if the City is monitoring pollution and activity at the Ascon-Nesi dumpsite. He stated pollution is getting worse since construction began on the berm. He also asked if the City has an evacuation plan in place and if that plan is available to citizens of the City. Mr. Gill lastly commented on traffic signals on Pacific Coast Highway he said are malfunctioning and the resulting traffic backups, asking Council to address this issue.

City Administrator Penny Culbreth-Graft asked the previous speaker to fill out a blue contact card so that staff may follow up with him.

(City Council) Presentation Made Regarding the Orange County Transportation Authority (OCTA) and the Reauthorization efforts for Measure M. (940.10)

Councilmember Cathy Green introduced three OCTA representatives: Art Leahy, Kelly Hart, and Ellen Burton. She announced Measure M funds received and spoke regarding the Measure M card, presenting a replica to Council. She stated that over \$41 million of Measure M funds have been received by the City of Huntington Beach since 1990.

Art Leahy gave an update on Measure M projects and spoke regarding the importance of improving infrastructure. He gave a PowerPoint report titled *Measure M, Your ½-Cent Sales Tax for Transportation at Work* that outlined the details of the measure and results to date. Mr. Leahy also announced the action required to extend the measure beyond 2011.

Councilmember Coerper stated his appreciation for the OCTA.

(City Administrator's Report) City Administrator Culbreth-Graft Introduced the New Information Services Director (100.30)

City Administrator Penny Culbreth-Graft Introduced Jack Marshall, the new Information Services Director and Mayor Jill Hardy welcomed him.

(City Council) Reviewed and Accepted Shari Freidenrich, City Treasurer's July 2005 Investment Summary Report Titled *City of Huntington Beach Summary of City Investment Portfolio, Bond Proceeds, and Deferred Compensation Activity for July 2005.* (310.20)

The City Council considered a communication from City Treasurer Shari Freidenrich transmitting the Monthly Investment Report and Summary of Investments for July 2005.

City Treasurer Freidenrich gave a PowerPoint presentation titled *July Treasurer's Report*, which was included in the agenda packet.

A motion was made by Coerper, second Sullivan to review and accept the Monthly Investment Report *Summary of City Investment Portfolio, Bond Proceeds, and Deferred Compensation Activity for July 2005*, pursuant to Section 17.0 of the Investment Policy of the City of Huntington Beach. The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook

NOES: None

ABSENT: None

Councilmember Gil Coerper commended the City Treasurer and her staff for their efforts.

(City Council) Public Hearing Held – Adopted Resolution No. 2005-58 Approving an Annual Assessment Within the Huntington Beach Hotel/Motel Business Improvement District (BID) for Fiscal Year 2005-2006 – Continued from September 6, 2005 Meeting. (460.30)

Mayor Hardy announced that this was the time noticed for a public hearing to consider the following:

Statement of Issue: At the City Council meeting of August 15, 2005 the City Council approved Resolution No. 2005-57. This action declared the City's intention to levy an assessment for the Huntington Beach Hotel/Motel Business Improvement District for 2005-2006 and authorized the City Clerk to schedule a public hearing to be held on September 6, 2005. Copies of the Resolution, Boundary Map and assessment formula were sent to each business to be assessed. In follow-up to this action, the City Council must now hold a public hearing and pass a resolution approving an annual assessment for the 2005-2006 fiscal year.

Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Economic Development Consultant Michael Hennessey gave a PowerPoint report titled *Huntington Beach Hotel/Motel Business Improvement District (BID) Annual Renewal for FY 2005-2006 September 6, 2005*, which was included in the agenda packet.

Mayor Hardy declared the public hearing open.

City Clerk Joan L. Flynn announced at this time the City Council would hear and consider all protests against the renewal of the Business Improvement District, the extent of the area, or the furnishing of specified types of improvements or activities within the area. All written protests were to be filed with the City Clerk at or before the time fixed for the protest hearing. A written protest may be withdrawn in writing at any time before the conclusion of this public hearing. A new protest may be made orally at this public hearing. If a business owner is making a new oral protest, and has not already filed a written protest, they must state clearly their name, business name, business address and assessment amount protested.

If written protests are received from the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn as to reduce the protests to less than 50 percent, no further proceedings to renew the specified Business Improvement District or to levy the proposed assessment, shall be taken for a period of one year from this date. If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the area, those types of improvements or activities shall be eliminated.

At the conclusion of the public hearing to renew the Business Improvement District, the City Council may adopt, revise, change, reduce or modify the proposed assessment of the type or types of improvements and activities to be funded with the revenues from the assessments.

The Mayor invited those wishing to speak on the matter to come forward and speak. No speakers stepped forward.

There being no persons present to speak on the matter and there being no protests filed, either written or oral, the Mayor declared the public hearing closed.

City Clerk Joan L. Flynn reported that if the protests total less than 50% of the total assessment amount, the City Council can approve the renewal of the Business Improvement District. If more than 50% of the total assessment is protested, the City Council cannot renew the Business Improvement District or consider it further for one year.

The percentage of assessments protested is 0% or \$0 of the \$530,000 total assessment amount.

A motion was made by Bohr, second Green to adopt City Council **Resolution No. 2005-58** – “A Resolution of the City Council of the City of Huntington Beach Approving an Annual Assessment Within the Huntington Beach Hotel/Motel Business Improvement District for Fiscal Year 2005-2006.” The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES: None
ABSENT: None

(City Council) Public Hearing Held – Adopted Resolution No. 2005-60 Approving an Annual Assessment Within the Huntington Beach Downtown Business Improvement District (BID) for Fiscal Year 2005-2006 – Continued from September 6, 2005 Meeting. (460.30)

Mayor Hardy announced that this was the time noticed for a public hearing to consider the following:

Statement of Issue: At the City Council meeting of August 15, 2005, the City Council approved Resolution No. 2005-53. This action declared the City's intention to levy an assessment for the Huntington Beach Downtown Business Improvement District for 2005-2006 and authorized the City Clerk to schedule a public hearing to be held on September 6, 2005. Copies of the Resolution, BID Boundary Map and assessment formula were sent to each business to be assessed. In follow-up to this action, the City Council must now hold a public hearing and pass a resolution approving an annual assessment for the 2005-2006 fiscal year, assuming the protest threshold is not reached.

Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Economic Development Consultant Michael Hennessey gave a PowerPoint report titled *Downtown Business Improvement District Annual Review FY 2005-2006; September 6, 2005*, which was included in the agenda packet.

Mayor Hardy declared the public hearing open.

City Clerk Joan L. Flynn announced at this time the City Council would hear and consider all protests against the renewal of the Business Improvement District, the extent of the area, or the furnishing of specified types of improvements or activities within the area. All written protests were to be filed with the City Clerk at or before the time fixed for the protest hearing. A written protest may be withdrawn in writing at any time before the conclusion of this public hearing. A new protest may be made orally at this public hearing. If a business owner is making a new oral protest, and has not already filed a written protest, they must state clearly their name, business name, business address and assessment amount protested.

If written protests are received from the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn as to reduce the protests to less than 50 percent, no further proceedings to renew the specified Business Improvement District or to levy the proposed assessment, shall be taken for a period of one year from this date. If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the area, those types of improvements or activities shall be eliminated.

At the conclusion of the public hearing to renew the Business Improvement District, the City Council may adopt, revise, change, reduce or modify the proposed assessment of the type or types of improvements and activities to be funded with the revenues from the assessments.

The Mayor invited those wishing to speak on the matter to come forward and speak. No speakers stepped forward.

There being no persons present to speak on the matter and there being no protests filed, either written or oral, the Mayor declared the public hearing closed.

City Clerk Joan L. Flynn reported that if the protests total less than 50% of the total assessment amount, the City Council can approve the renewal of the Business Improvement District. If more than 50% of the total assessment is protested, the City Council cannot renew the Business Improvement District or consider it further for one year.

The percentage of assessments protested is 0.39% or \$250 of the \$64,525 total assessment amount.

A motion was made by Coerper, second Green to adopt City Council **Resolution No. 2005-60** *"A Resolution of the City Council of the City of Huntington Beach Approving An Annual Assessment Within the Huntington Beach Downtown Business Improvement District for Fiscal Year 2005-2006."* The motion carried by the following roll call vote:

AYES:	Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES:	None
ABSENT:	None

(City Council) Public Hearing Held – Adopted Resolution No. 2005-61 Approving an Annual Assessment for the Huntington Beach Auto Dealers Business Improvement District (BID) for Fiscal Year 2005-2006 – Continued from September 6, 2005 Meeting. (460.30)

Mayor Hardy announced that this was the time noticed for a public hearing to consider the following:

Statement of Issue: At the City Council meeting of August 15, 2005, the City Council approved Resolution No. 2005-52. This action declared the City's intention to levy an assessment for the Huntington Beach Auto Dealers Business Improvement District for 2005-2006 and authorized the City Clerk to schedule a public hearing to be held on September 6, 2005. Copies of the Resolution, BID Boundary Map and assessment formula were sent to each business to be assessed. In follow-up to this action, the City Council must now hold a public hearing and pass a resolution approving an annual assessment for the 2005-2006 fiscal year. Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Economic Development Consultant Michael Hennessey gave a PowerPoint report titled *Huntington Beach Auto Dealers Business Improvement District (BID) Annual Renewal for FY 2005-2006 September 6, 2005*, which was included in the agenda packet.

Mayor Hardy declared the public hearing open.

City Clerk Joan L. Flynn announced at this time the City Council would hear and consider all protests against the renewal of the Business Improvement District, the extent of the area, or the furnishing of specified types of improvements or activities within the area. All written protests were to be filed with the City Clerk at or before the time fixed for the protest hearing. A written protest may be withdrawn in writing at any time before the conclusion of this public hearing. A new protest may be made orally at this public hearing. If a business owner is making a new oral protest, and has not already filed a written protest, they must state clearly their name, business name, business address and assessment amount protested.

If written protests are received from the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn as to reduce the protests to less than 50 percent, no further proceedings to renew the specified Business Improvement District or to levy the proposed assessment, shall be taken for a period of one year from this date. If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the area, those types of improvements or activities shall be eliminated.

At the conclusion of the public hearing to renew the Business Improvement District, the City Council may adopt, revise, change, reduce or modify the proposed assessment of the type or types of improvements and activities to be funded with the revenues from the assessments.

The Mayor invited those wishing to speak on the matter to come forward and speak. No speakers stepped forward.

There being no persons present to speak on the matter and there being no protests filed, either written or oral, the Mayor declared the public hearing closed.

City Clerk Joan L. Flynn reported that if the protests total less than 50% of the total assessment amount, the City Council can approve the renewal of the Business Improvement District. If more than 50% of the total assessment is protested, the City Council cannot renew the Business Improvement District or consider it further for one year.

The percentage of assessments protested is 0% or \$0 of the \$89,070 total assessment amount.

A motion was made by Bohr, second Coerper to adopt City Council **Resolution No. 2005-61** – *“A Resolution of the City Council of the City of Huntington Beach Approving an Annual Assessment Within the Huntington Beach Auto Dealers Association Business Improvement District for Fiscal Year 2005-2006.”* The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Hardy, Green, Bohr, Cook
NOES: None
ABSENT: Sullivan (out of room)

(City Council) Public Hearing Held – Approved Conditional Use Permit (CUP) No. 05-18 - Good Shepherd Cemetery (8301 Talbert Avenue) for Fencing along Newman Avenue.
(420.40)

Mayor Hardy announced that this was the time noticed for a public hearing to consider the following:

Applicant: Mike Padian, Padian Team Consulting

Request: To permit six-foot high view fencing and pilasters within an exterior side yard (zero setback) in lieu of the maximum allowable height of 42 inches along the Newman Avenue frontage. The proposed fencing will surround two detention basins with approximately 200 feet and 60 feet of frontage respectively along Newman Avenue.

Location: 8301 Talbert Avenue (south side of Newman Avenue, east of Beach Boulevard)

Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Associate Planner Paul DaVeiga presented a PowerPoint report titled *Good Shepherd Cemetery Fencing Conditional Use Permit No. 05-18*, which was included in the agenda packet.

Mayor Hardy declared the public hearing open.

Joe Novoa, Director of Construction Services for the Diocese of Orange, and **Mike Padian**, Padian Team Consulting announced their availability to answer any questions on behalf of the applicant.

There being no persons present to speak further on the matter and there being no further protests filed, either written or oral, the Mayor declared the public hearing closed.

A motion was made by Sullivan, second Hansen to approve Conditional Use Permit No. 05-18 with suggested findings and conditions of approval (Attachment No. 1*). The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES: None
ABSENT: None

ATTACHMENT NO. 1*

**SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. 05-18**

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the establishment and maintenance of view fence and pilasters involves negligible or no expansion of use beyond that previously existing, therefore no further environmental review is necessary.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 05-18:

1. Conditional Use Permit No. 05-18 for the establishment and maintenance of a six-foot high view fence and pilasters, in lieu of the maximum height of 42 inches allowed within the 10-foot setback, will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The fence is proposed with quality materials including split face concrete block and a decorative view fence design which will be aesthetically appealing when viewed from the street.
2. The conditional use permit will be compatible with surrounding uses since 710 lineal feet of the Newman Avenue frontage (970 lineal feet) will be provided with a 20-foot landscape setback. Two feet of landscaping located within the City's right-of way will be located in front of the proposed view fencing which will soften the appearance of the fencing when viewed from Newman Avenue.
3. The proposed conditional use permit will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO). The HBZSO allows for a deviation to the maximum height requirements within required setbacks with the approval of a conditional use permit.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Public on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:
 - a. Include building materials, colors, and construction elements that do not visually dominate their setting and do not contrast significantly with the character of the neighborhood (LU 9.1.2.b).
 - b. Include an adequate landscape setback along the street frontage that is integrated with abutting sidewalks and provides continuity throughout the neighborhood. (LU 9.2.1.e)

The majority of the Newman Avenue frontage will be developed with a 20-foot landscape setback, which will improve the aesthetics along the frontage of the property and soften the appearance of the proposed wall. In addition the use of split-face block combined with a decorative view fencing will allow for view corridors onto the subject site.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 05-18:

The site plan, floor plans, and elevations received and dated June 1, 2005 shall be the conceptually approved design.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

(City Council) Public Hearing Held – Approved Entitlement Plan Amendment (EPA) No. 05-03, Ellis Avenue Single Room Occupancy (SRO) Recreation Courtyard as Amended to Allow Staff to Research and Approve Alternate Patio Cover Options. (420.40)

Mayor Hardy announced that this was the time noticed for a public hearing to consider the following:

Applicant: James Lu, Huntington Beach Housing Associates, LP

Request: To modify the previously approved plan under Conditional Use Permit No. 99-31 by providing an open courtyard with landscaping, a fountain, and barbeque area in lieu of a swimming pool. The courtyard will serve as a common recreational area required for the single room occupancy development under requirements established in the Huntington Beach Zoning and Subdivision Ordinance.

Location: 8102 Ellis Avenue (south side of Ellis Avenue, east of Beach Boulevard)

Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Associate Planner Paul DaVeiga presented a PowerPoint report titled *Entitlement Plan Amendment No. 05-03 To Modify the Approved Plans Under CUP No. 99-31 by Changing the Amenities in the Open Space Area*, which was included in the agenda packet.

Councilmember Green inquired about the year-round functionality of a swimming pool in this development, and the reasons for substituting a courtyard. She also commented on delays in completion of the project. Staff responded, noting that the developer is also present to answer any questions.

Mayor Pro Tem Sullivan inquired about the size of the proposed gazebo or patio cover and the seating available. Councilmember Green also inquired about seating in the barbeque area. Staff reported that the seating would be consistent with the size of the development.

Mayor Hardy declared the public hearing open.

Prior to announcing the public speakers, the City Clerk restated for the record the following Late Communication which pertains to this public hearing:

Communications submitted by Shereen Walter dated September 13 and 16, 2005 requesting information on the Beachview Villas Apartments project located at 8102 Ellis Avenue and the resulting responses from Building & Safety and Planning Departments' staff dated September 15 and 19, 2005.

James C. Lu, applicant affiliated with Huntington Beach Housing Association and 25 year resident, thanked Council for its support of the project. He reported that the swimming pool is the only item remaining for construction to be complete and that delays with the project were due to concerns of the general contractor and to funding concerns. He stated construction costs have increased greatly over the years, and that the project now offers no profit to the developers, who are in the red approximately \$2.2 million, and the investors who are unhappy. He stated his opinion that the pool is impractical, has potential for future management problems, and that the location is poor. Mr. Lu stated insurance and safety concerns, and asked Council to approve EPA No. 05-03.

Shereen Walter, resident, urged Council to approve EPA 05-03. She asserted that many people are awaiting the opening of the complex, including her father. Ms. Walter stated that she toured the property and agrees that a swimming pool is impractical in the area proposed.

Anthony Cheng, affiliated with Huntington Beach Housing Association, thanked Council for its support of the project. He stated he received interest letters from over 2,000 applicants and continues to receive over fifty phone calls per day. He stated his agreement with the previous speakers' comments that the swimming pool is impractical. Mr. Cheng also spoke regarding a recreation room/sunroom planned for residents' events and he offered an alternative: to add tables with umbrellas rather than a patio cover in order to increase the light in the courtyard.

There being no persons present to speak further on the matter and there being no further protests filed, either written or oral, the Mayor declared the public hearing closed.

Mayor Pro Tem Sullivan inquired about steps noted on the plan and staff's opinion on tables with umbrellas. Staff responded that steps are no longer part of the proposal, and that staff would prefer something more permanent than umbrellas.

Councilmember Cook suggested cloth awnings with poles as an alternative to a patio cover.

Councilmember Green stated concerns with how much the project has changed from the original approved plan.

Mayor Hardy asked about indoor congregation areas. Staff responded that the indoor common area is adjacent to the outdoor courtyard, and that units have no private balconies.

Mayor Pro Tem Sullivan stated that he supports approval of the project.

A motion was made by Cook, second Sullivan to approve Entitlement Plan Amendment No. 05-03 with suggested findings and conditions of approval (Attachment No. 1*) **as amended** to allow staff to research and approve alternative patio cover options other than permanent. The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES: None
ABSENT: None

ATTACHMENT NO. 1*

**FINDINGS AND CONDITIONS OF APPROVAL
ENTITLEMENT PLAN AMENDMENT NO. 05-03**

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The proposed project will not have a significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section Class 1, Section 15301 of the CEQA Guidelines, because the request constitutes a minor amendment with no expansion of the use beyond that previously existing, therefore no further environmental review is necessary.

FINDINGS FOR APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 05-03:

1. Entitlement Plan Amendment No. 05-03 modifies the approved plans under Conditional Use Permit No. 99-31 by changing the amenities in the open space area. The change is to delete the swimming pool and provide an open courtyard with new landscaping, a fountain, and barbeque area. The entitlement plan amendment will not be detrimental to the general welfare of persons working or residing in the vicinity and detrimental to the value of the property and improvements in the neighborhood. The proposed modifications will support the recreational needs of residents within the development. The covered area will encourage the intended use of the area as a common recreational area and allow for additional activities. In addition, the proposed recreation courtyard will be usable year round as opposed to the swimming pool, which has limited use during the fall and winter months. In addition, staff has included a condition of approval that requires a permanent or temporary covered structure such as a gazebo, open lattice patio, or cloth awnings to be approved by the Planning Department, within the courtyard to encourage use of the courtyard for passive recreational activities.
2. The change in the design of the open space area will be compatible with surrounding uses because the overall use of the site is a unique hybrid between a residential and commercial project and will be harmonious with the existing Town & Country shopping center and adjacent residential uses. Sufficient landscaping will be provided around the perimeter of the courtyard to create a pleasant outdoor recreational area for residents and to provide a visual buffer to and from adjacent properties.
3. Entitlement Plan Amendment No. 05-03 will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance because the overall area of open space will be maintained.

4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Commercial General on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:
 - a. Require that all development be designed to provide adequate space for access, parking, supporting functions, open space, and any other pertinent elements. (LU 4.2.4)
 - b. Require that recreational and open space amenities be incorporated in new multi-family developments and that they be accessible to and of sufficient size to be usable by all residents. (LU 9.1.4)

The project, as conditioned, will provide adequate open space and recreational amenities including an indoor lounge, barbeque area, and outdoor seating areas that exceed the minimum standards identified in the HBZSO.

CONDITIONS OF APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 05-03:

1. The site plan for the recreation courtyard received and dated June 29, 2005, shall be the conceptually approved layout with the following modification:
 - A patio/gazebo/awning or comparable shade structure shall be provided within the courtyard and shall include additional outdoor seating.
2. All landscaping and irrigation, including the shade structure, shall be installed prior to issuance of the final certificate of occupancy.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

Consent Calendar – Item Removed for Separate Discussion

The following item was removed from the Consent Calendar for separate discussion:

(City Council) Acquisition for Public Park Purposes a Portion of the Site Formerly Used for Lamb Elementary School, Located at 10251 Yorktown Street, and a Portion of the Site Formerly Used for Wardlow Elementary School, Located at 9191 Pioneer Drive

Consent Calendar – Items Approved

On motion by Green, second Coerper Council approved the following Consent Calendar items, as recommended. The motion carried by the following roll call vote:

AYES:	Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES:	None
ABSENT:	None

(City Council/Redevelopment Agency) Approved and Adopted Minutes (120.65) -

Approved and adopted the minutes of the City Council/Redevelopment Agency Adjourned Regular Meeting of August 22, 2005 and City Council/Redevelopment Agency Special Meeting of August 23, 2005 as written and on file in the Office of the City Clerk. Submitted by the City Clerk.

(City Council) Adopted Annual Disadvantaged Business Enterprises (DBE) Goal for Fiscal Year 2005/2006 (340.70) – Adopted the Annual Disadvantaged Business Enterprises (DBE) goal of seven percent (7%). Submitted by the Public Works Director. Funding Source: Not applicable to this action.

(City Council) Approved Supplemental Law Enforcement Services Fund (SLESF) Grant from the County of Orange, Appropriated \$291,597 and Authorized Expenditure Plan for Fiscal Year 2005-2006 on Patrol Related Equipment (340.60) – 1. Approved the spending plan for the Fiscal Year 2005-2006 SLESF grant; and 2. Accepted the grant award of \$291,597 from the County of Orange SLESF for funding cycle year 2005/2006; and 3. Established a separate business unit for this funding; and 4. Authorized the Chief of Police to expend \$291,597, plus any accrued interest on patrol related equipment as described; and 5. Appropriated \$291,597, plus any accrued interest to be expended on patrol related equipment. Submitted by the Police Chief. Funding Source: No match will be required for this grant.

(City Council) Transferred Street Easement at Southeast Corner of Beach Boulevard and Edinger Avenue, related to Beach Boulevard Widening Improvements (CC-1105) to the State and Quitclaimed Unneeded Portion Back to the Original Grantor of Street Easement (650.80) – 1. Authorized the Mayor and City Clerk to execute the Highway Easement Deed granting the State of California an easement for street and public utility purposes over that certain real property designated as Parcels 102341-1 and 102341-2, and described on the attached exhibits; and 2. Authorized the Mayor and City Clerk to execute the Quitclaim Deed in favor of Huntington Executive Park, a California limited partnership, relinquishing the City's street easement rights over that certain real property designated as Parcels 1 and 2, and described on the attached exhibits. Submitted by the Public Works Director. Funding Source: Not applicable.

(City Council) Approved Grant Agreement Between the City of Huntington Beach and the Huntington Beach Conference and Visitors Bureau (HBCVB) for Fiscal Year 2005-2006 (600.10) – Approved and authorized execution by the Mayor and City Clerk of the Grant Agreement between the City of Huntington Beach and the Huntington Beach Conference and Visitors Bureau (HBCVB), for \$400,000 for fiscal year 2005-06. Submitted by the Acting Economic Development Director. Funding Source: Funding for the Grant Agreement is included in the proposed fiscal year 2005-06 City budget, Account No. 10080101.69365.

(City Council) Approved Employment Agreement Between the City of Huntington Beach and Stanley Smalewitz as Director of Economic Development (600.10) – 1. Approved the appointment of Stanley Smalewitz to the position of Director of Economic Development; and 2. Approved and authorized execution by the City Administrator of the Employment Agreement between the City of Huntington Beach and Stanley Smalewitz to the position of Director of Economic Development. Submitted by the Acting Deputy City Administrator. Funding Source: The position of Director of Economic Development is scheduled to be a budgeted position in the fiscal year 2005/2006 budget. No additional funding is required.

(City Council) Adopted Resolution No. 2005-66 Approving an Amendment to the Memorandum of Understanding (MOU) between the City and the Huntington Beach Police Officers' Association (HBPOA) (720.20) - Adopted Resolution No. 2005-66 – A Resolution of the City Council of the City of Huntington Beach Approving an Amendment to the Memorandum of Understanding between the City of Huntington Beach and the Huntington Beach Police Officers' Association to Implement a Transfer in the Scope of Representation for Employees in the Classifications of Police Sergeant and Senior Police Sergeant from the Police Management Association to the Huntington Beach Police Officers' Association. Submitted by the Human Resources Manager. Funding Source: No additional funding required. All funding remains included in the Fiscal Year 2004/2005 budget and in the Fiscal Year 2005/2006 budget.

(City Council) Waived Municipal Code Section 3.03.120 and Approved Amendment No. 3 Authorizing Execution of a One-Year Extension to the Professional Services Contract between the City and The Ferguson Group, LLC to Assist the City in Acquisition of Federal Funding for Priority Projects within the City and Related Legislative Issues (600.10) – 1. Approved waiving Municipal Code section 3.03.120, prohibiting the extension of an agreement beyond three years; and **2.** Approved extending the contract with the Ferguson group; and **3.** Authorized the Mayor and City Clerk to execute Amendment No. 3 to the contract between the City and the Ferguson Group. – Submitted by Mayor Jill Hardy on behalf of Intergovernmental Relations Committee: Members Councilmember Coerper and Councilmember Bohr. Funding Source: Funds are budgeted in the fiscal year 2005-06 budget under Administration Department, Professional Services Account #10030201.69365. The total cost for this contract amendment is not to exceed \$84,588.

(City Council) Approved Acquisition for Public Park Purposes a Portion of the Site Formerly Used for Lamb Elementary School, Located at 10251 Yorktown Street, and a Portion of the Site Formerly Used for Wardlow Elementary School, Located at 9191 Pioneer Drive (650.20)

The City Council considered a communication from the Acting Director of Economic Development/Deputy City Administrator, Community Services Director, and City Attorney transmitting the following **Statement of Issue:** On May 16, 2005, the City Council directed staff to negotiate with the Fountain Valley School District for the acquisition of approximately 2.6 acres of Lamb Elementary School and 6 acres of Wardlow Elementary School for public park purposes. On September 13, 2005, the Planning Commission reviewed the proposed acquisition terms and found that they were in conformance with the General Plan. Staff recommends the two properties be acquired for a total price of \$3,836,096 (includes any fees associated with the transfer of the real property). Funding Source: Total of \$3,836,096 (\$1,158,596 for the Lamb property, \$2,665,500 for the Wardlow property, and up to \$12,000 for fees associated with the transfer of the real property). The Park Acquisition and Development (PA & D) Fund will be the ultimate funding source, but it is proposed to have the PA & D Fund designate \$2,000,000 for the acquisition in FY 05/06 with the General Fund 2nd Tier Reserves providing a loan to the PA & D Fund for the remainder of the acquisition costs. The PA & D Fund will then pay back the General Fund loan with interest over the next two years.

Mayor Pro Tem Sullivan requested that this agenda item be removed from the Consent Calendar to state his opinion from where the funds should be appropriated. He asked Council to look at page E9.61 of the agenda packet and voiced his concerns with the effect on the City's park fund. He suggested \$750,000 comes out of the park fund and the balance from the secondary tier reserve.

Councilmember Hansen inquired about deficit balance, future construction of a Senior Center costing \$10 million, and stated his opinion that the staff recommendation is the best use of the funds.

Councilmember Bohr inquired about restricted usage of the different fund accounts. City Administrator Penny Culbreth-Graft reported.

A motion was made by Sullivan, second Coerper to: **1.** Approve acquisition of 2.6 acres of Lamb School and 6.0 acres of Wardlow School properties at 25% of fair market value utilizing the Naylor Act consistent with the City's Surplus Schools Property Purchasing Plan. **2.** Appropriate \$3,836,096 from the Park Acquisition and Development Fund to cover the total purchase price plus fees associated with the transfer of the real property. The General Fund 2nd Tier Reserves to loan the Park Acquisition and Development Fund \$1,836,096 to cover the total purchase price of the \$3,836,096. The loan to be paid back to the General Fund in **FY 11/12, as amended.** The loan will accrue interest at the annual rate earned by the City Treasurer on the city's investment portfolio. **3.** Authorize execution of the Purchase Agreements in substantially the same form as attached, and other necessary related documents by the Mayor, City Administrator, and City Clerk when advised by the City Attorney. **4.** Direct staff to open escrow on both parcels and to issue the required \$50,000 deposit per property. (Vote to follow)

Councilmember Bohr inquired about Quimby revenues and staff reported \$1.8 million are expected.

Councilmember Hansen suggested an amendment to the motion regarding the loan payback (item 2) -- to add "**or earlier if the Council should see fit**". The amendment was accepted by the maker and the second to the motion.

The motion, **as amended**, carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES: None
ABSENT: None

(City Council) Adopted Resolution No. 2005-65 Approving Memorandum of Understanding (MOU) Between the City and the Huntington Beach Marine Safety Officers' Association (MSOA) for October 1, 2003 to September 30, 2006 (720.20)

The City Council considered a communication from the Acting Deputy City Administrator transmitting the following **Statement of Issue**: Should the City and the Huntington Beach Marine Safety Officers' Association (MSOA) enter into a new Memorandum of Understanding (MOU) covering the period October 1, 2003 to September 30, 2006? Funding Source: Funding is included in the Fiscal Year 2004/2005 budget and will be included in the Fiscal Year 2005/2006 budget. The cost to implement the MSOA Memorandum of Understanding in Fiscal Year 2004/2005 is \$64,235 and \$62,650 in Fiscal Year 2005/2006.

City Administrator Penny Culbreth-Graft reported orally and thanked Human Resources Manager Irma Youssefieh, City Attorney Jennifer McGrath, and Acting Deputy City Administrator Chuck Thomas for their efforts.

A motion was made by Coerper, second Bohr to adopt **Resolution No. 2005-65** - *“A Resolution of the City Council of the City of Huntington Beach Approving and Implementing the Memorandum of Understanding between the Huntington Beach Marine Safety Officers’ Association (MSOA) and the City of Huntington Beach for October 1, 2003, to September 30, 2006.”* The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr
NOES: None
ABSENT: Cook (out of room)

(City Council) Adopted Ordinance No. 3722 Deleting Chapter 2.12 of the Huntington Beach Municipal Code with Reference to the Department of Administrative Services (700.10)

After the City Clerk reads by title, a motion was made by Coerper, second Green to adopt **Ordinance No. 3722** – *“An Ordinance of the City of Huntington Beach Deleting Chapter 2.12 of the Huntington Beach Municipal Code Relating to Administrative Services Department.”*

The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook
NOES: None
ABSENT: None

(City Council) Directed Staff to Develop a Communication Tool for Homeowners’ Associations (HOAs) and a “Template” Agreement in Coordination with the City Attorney’s Office that Allows HOAs to Compensate the City for Inspection Services Relative to Verizon Work on Private Streets (120.90)

The City Council considered a communication from Councilmember Cook transmitting the following **Statement of Issue**: Verizon’s “Fiber to the Premises” (FTTP) project involves street work throughout most of Huntington Beach. Verizon is required to obtain a Utility Encroachment Permit from the Public Works Department for inspection of work within the public right-of-way. The construction work affecting street pavement and concrete sidewalk areas consists of boring and open cut trenching to install conduits through which the fiber optic cables will be pulled.

The Public Works Department has the ability to require street restoration and concrete replacement in the public right-of-way. On private streets, areas covered by homeowners associations (HOA), Verizon may request access to these areas directly through the HOA with no Public Works encroachment permit required. Most HOAs do not have the expertise to condition and inspect the work of Verizon’s subcontractors.

It is important that these HOAs be provided the opportunity to retain professional assistance to properly oversee the work on their private streets and sidewalks. This assistance could be made available by private consulting inspection firms or through the city’s Public Works Department.

Councilmember Cook reported orally. A Verizon representative also reported, asking that Verizon be allowed to participate on the proposed template.

A motion was made by Cook, second Bohr to:

1. Direct staff to develop a communication tool that provides HOAs the adopted standards for restoration of infrastructure so that each HOA may retain its own consulting inspection; and/or
2. Direct staff to develop a "template" agreement in coordination with the City Attorney's office that allows HOAs to compensate the city for inspection services. Include in the agreement the necessary releases of liability.

Each of these approaches would allow the HOAs to charge Verizon for the right to work on the private streets to offset the cost of inspection.

As amended to allow Verizon the opportunity to comment on the template. The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Green, Bohr, Cook
NOES: None
ABSENT: Hardy (away from desk)

(City Council) Directed Planning Department to Prepare Zoning Map Amendment, Environmental Assessment, and Annexation Request for Bolsa Chica Mesa Hearthside Homes Development and Return to Council with an Appropriation of Funds for LAFCO Application Costs – Upon Receipt of Application for Development Agreement, Dedicate the Staff Resources Necessary to Conclude Process in Timely Manner – Annexation of the Bolsa Chica Mesa (Hearthside Homes Development Site) (450.40)

The City Council considered a communication from Councilmember Hansen transmitting the following **Statement of Issue**: The Hearthside Homes Project on the unincorporated Bolsa Chica Warner Mesa was approved by the California Coastal Commission on April 14, 2005, for the construction of 349 homes. Due to the adjacency of the project site to the city limits, this project will be an extension of the city and will use or require city services. As a result, there will be a fiscal impact to the city.

The Warner Mesa Annexation Study, a fiscal impact analysis prepared for the city by Rosenow Spevacek Group, Inc., is scheduled for review by the City Council at the September 19, 2005, Study Session. Preliminary review of that study by city staff indicates that it would be fiscally beneficial to the city of Huntington Beach for annexation to occur prior to development of the project.

Due to Hearthside's expected development schedule of the proposed project, it would be best to initiate annexation as soon as possible. On August 15, 2005, staff from the Local Agency Formation Commission (LAFCO) indicated that because the Bolsa Chica Warner Mesa is already within the city of Huntington Beach's sphere of influence, annexation would be supported by LAFCO. However, based on LAFCO requirements, the development site must be pre-zoned prior to annexation.

If the city chooses to initiate the annexation, fees totaling \$42,848 from an applicant would not be realized.

Councilmember Hansen reported orally, asking that the recommended action be amended to state that the report be returned to Council the first meeting of December.

A motion was made by Hansen, second Coerper to approve the recommended action, **as amended.** (vote to follow)

Council inquiries followed relative to fees, development agreement deadlines, and timelines for the approval process. Mayor Hardy reported on the first meeting in December traditionally having a light agenda.

Councilmember Cook suggested the project be referred to as Bolsa Chica rather than Warner Mesa, and asked for a legal opinion on how property taxes can be used. She also stated other concerns with the report given by the consultant during the Study Session portion of the meeting.

Councilmember Bohr suggested amendments to motion: to direct staff to pursue reimbursement of all application fees from the developer, to confirm that the project be referred to as "Bolsa Chica Mesa," and to direct staff to do value engineering on costs for the water pipeline, water reservoir, and accessory items.

Councilmembers commented on the importance of waiting for the purchase agreement to be finalized. The maker of the motion agreed to amend to direct staff to submit the report at the second meeting in December, and also accepted the suggested amendments made by Councilmember Bohr.

Councilmember Bohr suggested amending the motion to state the report be submitted to Council at a Special meeting on December 12, 2005.

The maker and the second to the motion accepted all amendments.

Mayor Pro Tem Sullivan inquired further about development and purchase agreements, and Councilmember Cook reported on the deadline for the agreement before funds go away.

Mayor Hardy reported on property taxes received by the City and stated her opposition to annexation until the purchase agreement is finalized, but support for a study of pipeline costs.

Councilmembers Bohr, Hansen, and Green stated reasons for supporting the amended motion, including benefits to the City.

Councilmember Cook reiterated her opinion that there is a need for a legal opinion on tax revenue usage.

Mayor Hardy spoke regarding park open space, suggesting park in-lieu fees are necessary to negotiate as part of the development agreement.

Mayor Pro Tem Sullivan stated his interest in proof of the Lower Bench sale and for strong staff negotiations on the development agreement.

Councilmember Coerper stated concerns with the County developing the area, stating less park areas than the City would require would be the result.

The motion to direct the Planning Department to prepare a Zoning Map Amendment, Environmental Assessment, and Annexation Request for the Warner Mesa Hearthside Homes development and return to the City Council with an appropriation of funds for LAFCO application costs at a Special meeting on December 12, 2005 **as amended** to direct staff to pursue reimbursement of all application fees from the developer, to confirm that the project be referred to as "Bolsa Chica Mesa," and to direct staff to do value engineering on costs for the water pipeline, water reservoir, and accessory items **and** upon receipt of an application for a development agreement, dedicate the staff resources necessary to conclude the process in a timely manner was voted on. The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Sullivan, Green, Bohr
NOES: Hardy, Cook
ABSENT: None

(City Council) Councilmember Green Reported on Events Attended (120.85)

Councilmember Cathy Green reported on events she attended including funerals for Harry Dotson and Richard Silver; the Spurgeon Awards, and an Eagle Scout Ceremony.

(City Council) Councilmember Coerper Reported Son Returned and Must Report Back to Iraq. (120.85)

Councilmember Gil Coerper reported that his son returned two weeks ago and must report back to Iraq soon.

Adjournment – City Council/Redevelopment Agency

Mayor Hardy adjourned the regular meetings of the City Council/Redevelopment Agency of the City of Huntington Beach at 10:00 p.m. to Monday, September 26, 2005, at 6:00 p.m., in Room B-8 Civic Center, 2000 Main Street Huntington Beach, California.

City Clerk and ex-officio Clerk of the City
Council of the City of Huntington Beach
and Clerk of the Redevelopment Agency
of the City of Huntington Beach, California

ATTEST:

City Clerk-Clerk

Mayor-Chair